

# EXHIBIT E

Page 2

1 IN THE UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION  
4 ---o0o---  
5  
6 IN RE PACIFIC FERTILITY No. 3:18-cv-01586-JSC  
7 CENTER LITIGATION. /  
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12  
13  
14  
15 VIDEOTAPED DEPOSITION of ANAND KASBEKAR,  
16 Ph.D., taken on behalf of Defendant, via Zoom  
17 videoconference, beginning at 10:04 a.m., December 15,  
18 2020, before CONNIE MARTIN DUNNE, RPR, Certified  
19 Shorthand Reporter No. 6245.  
20  
21  
22  
23  
24  
25

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1 I N D E X  
2 EXAMINATION BY PAGE  
3 MR. DUFFY ..... 6  
4 ---o0o---  
5  
6 E X H I B I T S  
7 DEFENDANT'S DESCRIPTION PAGE  
8 223 Failure Analysis of Chart MVE 808AF-GB .. 6  
9 Cryopreservation Tank, Pacific  
10 Fertility Center Litigation, rebuttal  
11 report (20 pages)  
12 ---o0o---  
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1 A P P E A R A N C E S  
2 (Via videoconference)  
3 FOR THE PLAINTIFF AND INTERIM CLASS COUNSEL:  
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10  
11 FOR THE DEFENDANT CHART:  
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15 Chicago, Illinois 60611  
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18  
19 Also Present: Philip Knowles, Videographer  
20 ---o0o---  
21  
22  
23  
24  
25

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1 PROCEEDINGS  
2 December 15, 2020  
3 ---o0o---  
4 **THE VIDEOGRAPHER:** Good morning. My name is  
5 Philip Knowles, and I'm your host and videographer  
6 associated with Barkley Court Reporters, located at 201  
7 California Street, Suite 375, in San Francisco,  
8 California 94111.  
9 The date today is Tuesday, December 15th,  
10 2020, and the time is approximately 10:04 a.m., Pacific  
11 Standard Time, a.m.  
12 This deposition is taking place remotely via  
13 Zoom in the matter of The Pacific Fertility Center  
14 Litigation, with Case Number 3:18-cv-01586-JSC.  
15 This is the videotaped deposition of Dr. Anand  
16 Kasbekar, GB taken on behalf of Chart's counsel.  
17 Will counsels for the parties please voice --  
18 can't speak right now. I'm sorry. Will counsel for the  
19 parties please voice identify themselves now?  
20 **MS. ZEMAN:** Amy Zeman on behalf of the  
21 plaintiff.  
22 **MR. DUFFY:** John Duffy on behalf of Chart.  
23 **THE VIDEOGRAPHER:** Thank you, counsel.  
24 The court reporter may now swear in the  
25 witness, and we can proceed.

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1 BE IT REMEMBERED that set on Tuesday,  
2 December 15, 2020, commencing at the hour of 10:04 a.m.,  
3 taken remotely before me, CONNIE MARTIN DUNNE, RPR, CSR  
4 No. 6245, a Certified Shorthand Reporter, remotely  
5 appeared  
6 ANAND KASBEKAR, M.D.,  
7 having been called as a witness by the Defendant, who  
8 having been sworn or affirmed by me to tell the truth,  
9 the whole truth and nothing but the truth, was thereupon  
10 examined and testified as hereinafter set forth:  
11 ---o0o---  
12  
13 (DEFENDANT'S EXHIBIT 223 WAS  
14 MARKED FOR IDENTIFICATION.)  
15 EXAMINATION  
16 BY MR. DUFFY:  
17 Q. Good morning, Dr. Kasbekar. Nice to see you  
18 again.  
19 A. Same, Mr. Duffy.  
20 Q. I have gone ahead and marked as Exhibit 223 a  
21 copy of your rebuttal report, and we put that in the  
22 chat feature, and do you have that open in front of you  
23 for reference?  
24 A. I do.  
25 Q. As part of the work for your rebuttal, you did

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1 a finite element analysis; is that right?  
2 A. That's correct.  
3 Q. At the time of your last deposition, you did  
4 not have a license for the software that would allow you  
5 to run a finite element analysis; correct?  
6 A. That's correct.  
7 Q. Did you acquire a license so that you could  
8 run that analysis?  
9 A. No, I did not. I worked with Altair Computing  
10 to run the analysis.  
11 Q. And if you would tell me who Altair Computing  
12 is, I would appreciate it.  
13 A. Altair Computing is a company based out of  
14 Detroit, Michigan, and they have a soft- -- several  
15 software packages. Back when I was working with --  
16 Hyper Mesh was a big package that -- that I was  
17 personally using from them.  
18 But they're a company that specializes in  
19 finite element analysis and finite element meshing  
20 technology.  
21 Q. And how -- how did you come to partner with  
22 that company to do the FEA work?  
23 A. I have a longstanding relationship with them.  
24 When I was doing contracts for the Department of  
25 Defense, we had a cooperative research agreement with

Page 8

1 them. We were using their products, and they were  
2 supporting us with regard to our defense contracts, and  
3 I just had a longstanding relationship with them.  
4 Q. Did -- who specifically did you work with at  
5 Altair?  
6 A. I worked with an individual by the name of  
7 Noreen Gilbertsen.  
8 Q. And did you provide the inputs for  
9 Ms. Gilbertsen to do the FEA?  
10 A. I did.  
11 Q. Did anyone help you with that?  
12 A. No. It was primarily me and Ms. Gilbertsen  
13 working on it.  
14 Q. I guess my question was a little different.  
15 For the inputs that you gave to  
16 Ms. Gilbertsen, did you alone decide the inputs?  
17 A. Yes. I mean, absolutely. I didn't work with  
18 anybody else on that.  
19 Q. Okay. And what is Ms. Gilbertson's education?  
20 Do you know?  
21 A. She has a bachelor's and master's in  
22 engineering and a Ph.D. in structural mechanics and  
23 30 years of experience working in the area of finite  
24 element analysis.  
25 Q. Does Ms. Gilbertsen have any training in

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1 cryogenic engineering?  
2 A. I don't believe so.  
3 Q. During your last deposition, I believe you  
4 told me that you stopped doing FEAs around the time you  
5 stopped doing work for the Department of Defense; is  
6 that -- is that about right?  
7 A. I -- I don't know exactly what I said, but  
8 it's something -- we didn't -- I stopped maintaining our  
9 software licenses because we had some pretty large  
10 domineer -- our complex domineer software code licenses  
11 and meshing licenses sometime shortly after we completed  
12 all of our work for the Department of Defense, and then  
13 I began utilizing Altair essentially on forensic  
14 projects where I needed FEA work done.  
15 Q. When's the last time you worked with Altair to  
16 do an FEA project for a case?  
17 A. Oh. I would say probably three or so years  
18 ago.  
19 Q. Right. What -- what did that case involve?  
20 A. We were working on a case involving an  
21 aircraft tow bar that had failed and released an aircraft  
22 owned by the Heinz family that then rolled into a King  
23 Air aircraft, and there was a fracture of the tow bar  
24 that we evaluated, and we evaluated the stresses on it  
25 using finite element analysis.

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1 Q. So the product at issue in that case was a tow  
2 bar for aircraft?

### 3 A. Exactly.

4 Q. When I looked at your curriculum vitae from  
5 your first report, I saw that the last major research  
6 project you have for the Department of Defense, as  
7 listed at least in your CV, was in 2003. That sound  
8 about right?

9       A. That was probably the last publication  
10       associated with it, but, no, that wasn't the end of it.  
11       (Reporter requesting clarification.)

**12 (Discussion off the record.)**

13           **THE WITNESS:** That was not the end of our  
14 work.

15 BY MR. DUFFY:

16 Q. Would you provide me with your best estimate  
17 as to when you stopped doing work for the Department of  
18 Defense?

19       A. I would say sometime in the neighborhood of  
20       2010.

21 Q. And was that -- thank you.

22 Would that be about the last time you  
23 maintained a software license for a finite element  
24 analysis program?

25      **A. No. That, I don't know the answer to. I**

**22      There's a difference of opinion there.**

23 Q. Let me -- let me ask you this: Did -- there  
24 is evidence in this case that liquid nitrogen levels  
25 were required at PFC to be kept at 11 inches; correct?

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**1 don't know when our license expired.**

2 I just made the -- at some point, I made the  
3 decision not to continue to maintain -- we own -- so let  
4 me -- let me explain that to you Mr. Duffy.

5 Q. Okay.

6       A. We own two licenses of the software, so we --  
7       we actually physically own them. They're ours. We  
8       bought them in perpetuity.

9           The issue is that if you want to continue to  
10 maintain and -- and receive improvements of the  
11 software, you have to continue to pay maintenance fees  
12 that are on the order of, you know, tens of thousands of  
13 dollars a year for the particular software packages that  
14 we own.

15           So I made a decision at some point that it was  
16       not worth paying \$20,000, or however much it was back  
17       then, to -- to maintain those licenses.

18 Q. Do the material properties of metal's thermal  
19 conductivity and thermal expansion coefficient depend on  
20 the temperature of the metal?

**21      A. They can.**

22 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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1      A. Yeah, I'm sure there was.

2 Q. And you've reviewed the data download that  
3 came from Tank 4; correct?

**4 A. Some time ago but yes.**

5 Q. And the data download shows that liquid levels  
6 were maintained above 11 inches; does it not?

7 A. Well, I believe actually that Chart's former  
8 attorney had questioned me about that, and there were  
9 times where that level may have decreased below that  
10 11 inches.

11 Q. Sure. Those were for dates in 2013 and 2014?  
12 Is that something you recall?

13       A. I don't recall the specific dates; I just  
14       recall the occurrences.

15 Q. Well, other than those dates, the data  
16 download shows that the liquid nitrogen levels exceeded  
17 11 inches; correct?

18       A. I think, in general, that's fair to the best  
19       of my recollection.

[illegible]

1

Response	Percentage
Yes, the U.S. should take action to address climate change	95%
No, the U.S. should not take action to address climate change	5%

Response	Percentage
Yes, the U.S. should take action to address climate change	95%
No, the U.S. should not take action to address climate change	5%

1

[illegible]

Category	Value (approximate percentage)
1	35
2	85
3	92
4	25
5	65
6	92
7	45
8	95
9	98
10	92
11	25
12	90
13	95
14	88
15	65
16	95
17	95
18	88
19	98
20	92
21	90
22	25
23	85
24	95
25	98

A horizontal bar chart consisting of 20 black bars of varying lengths. The bars are arranged vertically, with the longest bar at the top and the shortest bar in the middle. The lengths of the bars vary significantly, with some bars being nearly full-width and others being much shorter.

<p>Page 22</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p> <p>25 Q. Would you agree with me that the FEA run by</p>

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**the entire issue.**

Q. And then all of the other days of the six years of the operation of this freezer, it's above 11 inches; correct?

A. It may very well be.

114

[illegible]



Page 30

[REDACTED]

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1 Q. Well, okay. But do you agree that the fill  
2 pipe as it comes into the door and where that weld is,  
3 that's a liquid nitrogen temperature; correct?  
4 A. Only after it's been filled with liquid  
5 nitrogen.  
6 Q. Is -- is it -- was it your assumption that  
7 that fill tube completely emptied of liquid nitrogen  
8 after every fill?  
9 A. No.  
10 Q. Okay. So there's some liquid nitrogen in the  
11 fill tube; correct?  
12 A. I think the liquid nitrogen in the fill tube  
13 will be the height of the liquid nitrogen in the tank.  
14 I'm not disagreeing with that at all.  
15 Q. If there's liquid nitrogen in the fill tube  
16 and -- and -- and it's up to the level let's say of 11  
17 inches -- okay? You understand that?  
18 A. I understand.  
19 Q. And your calculation says the entire fill tube  
20 goes from room temperature to LN2 temperature; correct?  
21 A. It does at some point, correct.  
22 Q. But if there's liquid nitrogen in the fill  
23 tube up to 11 inches, then that part of the fill tube is  
24 going to be at LN2 temperature; correct?  
25 A. I don't disagree with that.

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1 for 304.  
2 Did you review the data download to help do  
3 the inputs for the FEA?  
4 A. From the controller?  
5 Q. Yes.  
6 A. No. I don't think -- that's not particularly  
7 relevant to me, in my opinion.  
8 Q. Help me -- help me understand why it is that  
9 the initial fill cycle is important to your FEA analysis  
10 and that its operation for the next six years is not?  
11 A. It's not so much --  
12 MS. ZEMAN: Objection. Asked and answered.  
13 THE WITNESS: It's not so much the initial  
14 fill cycle as, again, it's the way that this is  
15 manufactured.  
16 BY MR. DUFFY:  
17 Q. Because it's welded?  
18 A. Well, because it's manufactured at room  
19 temperature and then cooled to liquid nitrogen  
20 temperature.  
21 Q. Did you consider the weld's performance during  
22 the six years it was in operation at PFC?  
23 A. I -- I mean, I'm not sure what you mean, did I  
24 consider the weld's performance. At -- at some point,  
25 it was failing.

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1 Q. You used a strain-based approach, is that  
2 right, for your FEA?  
3 A. We use a temperature change to induce the  
4 loading in the FEA, not a calculated strain.  
5 Q. Explain that to me.  
6 A. Well, the -- the driving force for, you know,  
7 the -- for loading up our FEA is, basically, telling the  
8 FEA that that tube and fitting go from one temperature  
9 to another temperature, in contrast to the ESI FEA  
10 taking the number that Dr. Miller calculated and  
11 inputting that as a driving force.  
12 Q. Okay. What would happen to the stress  
13 concentrator at the weld root when a cyclic load is  
14 applied that is greater than the material yield strength  
15 but high enough for monotonic ductile overload.  
16 (Reporter requesting clarification.)  
17 (Discussion off the record.)  
18 THE WITNESS: Can I get the court reporter or  
19 you to read back the question?  
20 BY MR. DUFFY:  
21 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Age Group	Percentage of Respondents
18-29	90%
30-49	85%
50-64	80%
65+	60%

Age Group	Should Take Action (%)	Should Not Take Action (%)
18-29	85	15
30-49	85	15
50-69	85	15
70+	85	15

<p>Page 38</p> <p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>

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[REDACTED]

14 Q. What paper are you relying on for this design?

15 A. The same paper we were talking about earlier

16 that shows a very similar design but with more of a --

17 instead of those two tubes -- I'm going to use my

18 fingers again because I don't have two pens, or maybe I

19 do.

20 Instead of those two tubes GB like that in our

21 simplified beam model, they are more like this.

22 Q. What -- what paper is that again?

23 A. It's -- it's the one that we were talking

24 about on thermal contraction and cryogenic vessels.

25 Q. Is that in Footnote -- it's on page 5

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1 originally?

2 A. I think we were looking at page 7, too. Yeah,

3 Footnote Number 30.

4 Q. Okay. Are you -- are you critical of

5 Mr. Parrington and Dr. Miller for not providing an

6 explanation for the rapid depletion of liquid nitrogen?

7 A. I -- I don't know that Mr. Parrington even got

8 into that. I do think -- and I'm not sure if I'm

9 answering the right question, but I do think in

10 Mr. Miller's -- or Dr. Miller's work, that the fact that

11 he ran one experiment and it didn't agree with what

12 the -- Prelude or PFC clinical staff said, I am critical

13 of that. I don't think he reaches a conclusion in a --

14 in a logical manner that he reaches.

15 Q. Let me -- let me ask the question again

16 because I think you may have answered --

17 A. Sure.

18 Q. -- a question I didn't ask.

19 Are you critical of Mr. Parrington and

20 Dr. Miller for not providing a reasonable explanation

21 about the rapid depletion of liquid nitrogen?

22 A. I'm not necessarily critical of them for that.

23 I -- I -- I guess I don't understand completely the

24 question. I don't know that -- I -- I just -- I -- I'm

25 not critical of them in particular for that, no.

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1 Q. Okay. Is it an opinion that you hold that

2 there was a rapid depletion of liquid nitrogen out of

3 Tank 4?

4 A. I think there was a depletion that was more

5 rapid than the normal net evaporation rate for nitrogen

6 in Tank 4.

7 Q. What -- how fast do you think the LN2

8 evaporated?

9 A. I -- you know, all -- all I know to tell you

10 is that between the time that it was filled and reported

11 to be at a level of about 14 inches and the time that

12 the tank was open and reported to be at a level of, at

13 most, one inch, that that additional 13-plus inches went

14 somewhere.

15 That's all -- that's all I know about the

16 depletion rate.

17 Q. So if we take the boundaries of that testimony

18 and have the measurement of 14 inches GB made at 2:30 on

19 Saturday, the 2nd --

20 A. Uh-huh.

21 Q. -- and Dr. Conaghan opening the lid at about

22 12:20 on Sunday, March 4, it's about 22 hours?

23 A. That is correct.

24 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 Q. Okay. And it was, in a 22-hour period, a

16 combination of liquid nitrogen and liquid nitrogen gas

17 poured into the vacuum space; correct?

18 A. Again, I'm -- I'm not going to agree to the

19 use of the word "poured" --

20 Q. Okay.

21 A. -- but if you want to change that to

22 "migrated" I -- I will give you that.

23 Q. Okay. So you believe that the liquid nitrogen

24 migrated into the vacuum space in a 22-hour period;

25 correct?

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1 A. I believe that there was a combination of boil  
2 off and nitrogen migration into the vacuum space over  
3 that period; it's -- it's a logical explanation, given  
4 the testimony and what happened to the tank. And I,  
5 quite frankly, believe that Dr. Miller's testing, which  
6 does not involve any sort of a breach on the inside of  
7 the tank GB simulated, helps to confirm that.

8 MS. ZEMAN: Connie, I have an objection, and  
9 could you make sure that that gets in there? It was  
10 "misstates testimony."

11 BY MR. DUFFY:

12 Q. Okay. So let me make sure I -- I understand  
13 this, Dr. Kasbekar.

14 It is your opinion that the liquid nitrogen  
15 inside the dual (phonetic) migrated into the vacuum  
16 space in a 22-hour period? Is that fair to state?

17 A. Again, that's not what I said; I said that I  
18 believe that nitrogen, either in gas and/or liquid form,  
19 in part entered into the vacuum space. There's also  
20 boil off going.

21 So you got two things going on. You've got  
22 evaporation at a higher-than-normal rate, and you've  
23 got, in my opinion, a breach of some size between the  
24 inner tank and the vacuum space.

25 Q. So the 22 inches that it migrates, it migrates

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1 in two fashions: One through the crack, and one through  
2 boil off; correct?

3 A. The -- 22 inches?

4 Q. I'm sorry. The -- let me restate the -- the  
5 question.

6 You believe the 22 inches of liquid nitrogen  
7 migrated into the vacuum space as gas or liquid or both  
8 and also boiled off during that period of time; correct?

9 A. Well, Mr. Duffy, I don't believe there were  
10 22 inches of liquid nitrogen in the tank.

11 Q. Sorry. There was 14 inches of liquid nitrogen  
12 is what you assumed; correct?

13 A. That's not what I assumed; that's -- that's  
14 what Jean Popwell reported that she --

15 Q. You have to assume that's accurate; right?

16 A. I'm assuming that's reasonably accurate.  
17 Whether it was 13.8 or 14.2, I don't know, but I assume  
18 that it's -- I have no reason to believe that she's not  
19 GB truthful.

20 Q. Okay. And you believe that that amount of  
21 liquid nitrogen migrated into the vacuum space, in part;  
22 correct?

23 A. I absolutely don't believe that that amount  
24 migrated into the vacuum space.

25 I -- I believe the nitrogen depleted due to

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1 boil off at a more rapid than normal rate because of  
2 loss of vacuum, and that in part nitrogen gas made it  
3 into the vacuum space and perhaps some liquid nitrogen  
4 made it into the vacuum space --

5 Q. Okay.

6 A. -- but I don't know at what rate and the exact  
7 quantity of boil off versus migration into the vacuum  
8 space.

9 Q. And in Dr. Miller's testing that he performed,  
10 he spoiled the entire vacuum; correct?

11 A. That's correct.

12 Q. So that would cause a rapid depletion of the  
13 vacuum seal itself; correct?

14 A. That's correct.

15 Q. And you saw the photographs he took, as well?

16 A. Photographs of what?

17 Q. Of the exemplar freezer.

18 A. Yes.

19 Q. And you saw the ball of ice near the lid?

20 A. I did.

21 Q. And then the condensation on the exterior  
22 of -- of the exemplar; right?

23 A. I did.

24 Q. And water collected on the floor; correct?

25 A. Correct.

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1 Q. And there's been no testimony in this case  
2 that Tank 4 had any ice near the lid; correct?

3 A. That's correct.

4 Q. And there's no testimony in this case that the  
5 exterior skin of Tank 4 had condensation on it; correct?

6 A. I -- nothing other than near the bottom is my  
7 recollection of the testimony.

8 Q. Correct. So but unlike -- if you contrast it  
9 with Dr. Miller's testing, that condensation goes from  
10 the top all the way to the bottom; correct?

11 A. It -- I -- I would agree that Dr. Miller's  
12 testing was not consistent with what the lab personnel  
13 reported.

14 Q. If Jean Popwell didn't actually measure on  
15 Saturday, the 3rd, how would that impact your opinions?

16 A. If -- if the tank was not filled at that  
17 point?

18 Q. Correct.

19 A. Then I would think that -- we have no idea,  
20 anyone, of knowing what the fill level may have been on  
21 that date.

22 Q. What if she didn't measure on Friday, the 1st?  
23 How would that impact your opinions?

24 A. Again, I mean, I -- my opinion would be that  
25 if she's not measuring and doing her job, then that's a

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1 contributing factor to loss of liquid nitrogen.  
2 I just don't see any evidence of that.  
3 MS. ZEMAN: John, we've been going about an  
4 hour. Can we take a five- or ten-minute break in the  
5 near future?  
6 MR. DUFFY: Yes.  
7 MS. ZEMAN: You want to do that now?  
8 MR. DUFFY: Thank you. Sure. That's great.  
9 THE VIDEOGRAPHER: We are going off the record  
10 at 11:06 a.m., Pacific Standard Time.  
11 (Recess taken.)  
12 THE VIDEOGRAPHER: We are now going back on  
13 the record. The time is 11:15 a.m., Pacific Standard  
14 Time.  
15 BY MR. DUFFY:  
16 Q. Dr. Kasbekar, I was asking you before we took  
17 a break about some of the testing that Dr. Miller did,  
18 and I'd like to ask you some more questions about that.  
19 A. Sure.  
20 Q. In -- in your theory, we assume Jean Popwell  
21 measured -- actually measured on Saturday, the 3rd, and  
22 got a 14-inch measure; correct?  
23 A. That's correct.  
24 Q. And by mid day on Sunday, the 4th,  
25 Dr. Conaghan observed only ice at the bottom of -- of

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1 the freezer and gets a manual measurement of about one  
2 inch; is that right?  
3 A. I -- I don't recall him saying he observed  
4 only ice, but I do recall that he got somewhere around a  
5 inch or less.  
6 Q. Okay. And that 13 inches of liquid nitrogen  
7 went somewhere between about 2:30 on Saturday and about  
8 12:20 on Sunday; fair?  
9 A. I would agree with that.  
10 Q. And Dr. Miller ended up spoiling the vacuum  
11 completely in his test; correct?  
12 A. That's my understanding. He put one  
13 atmosphere pressure in there.  
14 Q. And the vacuum seal would lose all its vacuum  
15 properties; correct?  
16 A. That's correct.  
17 Q. It would no longer be able to keep cryogenic  
18 temperatures; correct?  
19 A. Well, I don't -- wouldn't say "would no longer  
20 be able to." I mean, you've got liquid nitrogen in  
21 there that's keeping things cold, but, certainly, you've  
22 lost your effective vacuum insulation.  
23 Q. And that will cause LN2 to boil off; correct?  
24 A. At a more rapid rate, yes.  
25 Q. And when Dr. Miller was even an hour or two

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1 into his testing, ice was forming near the top of the  
2 lid; correct?  
3 A. I don't remember the exact time period, but  
4 I -- I thought it was within three hours or something  
5 along those lines.  
6 Q. And then when he came in the next morning,  
7 there was still ice, even more of it than when he left.  
8 Look at the comparison of those photographs.  
9 A. I -- I recall that.  
10 [REDACTED]

[REDACTED]

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1 evidence that she would have grossly underfilled it. So  
2 it's not an assumption on my part; I'm relying upon her  
3 testimony.

4 Q. And there's no evidence that she grossly  
5 underfilled; correct?

6 A. I -- I don't see any evidence of that, and I  
7 don't think that Dr. Miller's testing proves that.

8 Q. Okay. But -- but you haven't seen any  
9 evidence of her grossly underfilling Tank 4 on Saturday;  
10 correct?

11 A. I am not aware of it.

12 Q. Have you looked in your work on this case at  
13 the reflections data that was produced by PFC and then  
14 the metadata that was produced?

15 A. Very, very quickly. Not "very quickly," but,  
16 you know, some time ago I -- I went through that but not  
17 in great detail.

18 Q. And -- and that didn't give you any cause to  
19 question whether the lab personnel were manually  
20 measuring?

21 A. Again, I -- I understand there's some  
22 discrepancies and some things are logged after the time  
23 that they were done, but, again, I'm not -- I don't  
24 think part of my role is to determine whether lab  
25 personnel are telling the truth or not.

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1 I'm -- I'm trying to evaluate objectively, and  
2 I think in my rebuttal report my comment was that I find  
3 it difficult to see how -- if somebody was, in fact,  
4 filling this tank, they would only fill it to a level  
5 that would leave two to three inches or more of the  
6 contents exposed. That doesn't make sense to me.  
7 I really think that's for a jury to determine,  
8 whether or not they want to believe Dr. Miller or -- or  
9 Jean Popwell.  
10 I'm just saying that one explanation for the  
11 difference between those two might be the fact that  
12 Miller is not accounting for a potential breach inside  
13 the tank in his testing.  
14 MR. DUFFY: Let me check my notes. I might be  
15 done.  
16 (Counsel reviews notes.)  
17 MR. DUFFY: That's all I have. Thank you for  
18 your time.  
19 THE WITNESS: Thank you, Mr. Duffy.  
20 MR. DUFFY: Any follow up?  
21 THE WITNESS: Do you have any questions for  
22 me?  
23 MS. ZEMAN: No questions.  
24 THE REPORTER: Could I get your transcript  
25 request on the record, please?

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1 MR. DUFFY: Sure. We'd like a rough and an  
2 expedited, if we could.  
3 MS. ZEMAN: I'd like an expedited, if we could  
4 get that within the next two days.  
5 THE REPORTER: Sure.  
6 The same, Mr. Duffy?  
7 MR. DUFFY: Yeah, that would be great.  
8 THE VIDEOGRAPHER: This now ends the remote  
9 deposition through Zoom. We are going off the record at  
10 11:26 a.m., Pacific Standard Time.  
11 Thank you, counsel, and thank you to our  
12 witness.  
13 (Deposition concluded at 11:26 a.m.)  
14 ---o0o---  
15  
16 I have read the foregoing deposition  
17 transcript and by signing hereafter, subject to  
18 any changes I have made, approve same.  
19  
20 Dated\_\_\_\_\_.  
21  
22  
23 \_\_\_\_\_  
24 (Signature of Deponent)  
25

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1 DEPOSITION OFFICER'S CERTIFICATE  
2 STATE OF CALIFORNIA }  
3 COUNTY OF CONTRA COSTA } ss.  
4  
5  
6 I, Connie Martin Dunne, hereby certify:  
7 I am a duly qualified Certified Shorthand  
8 Reporter in the State of California, holder of  
9 Certificate Number CSR 6245 issued by the Court  
10 Reporters Board of California and which is in full force  
11 and effect. (Fed. R. Civ. P. 28(a)).  
12 I am authorized to administer oaths or  
13 affirmations pursuant to California Code of Civil  
14 Procedure, Section 2093(b) and prior to GB examined, the  
15 witness was first duly sworn by me. (Fed. R. Civ. P.  
16 28(a), 30(f)(1)).  
17 I am not a relative or employee or attorney or  
18 counsel of any of the parties, nor am I a relative or  
19 employee of such attorney or counsel, nor am I  
20 financially interested in this action. (Fed. R. Civ. P.  
21 28).  
22 I am the deposition officer that  
23 stenographically recorded the testimony in the foregoing  
24 deposition and the foregoing transcript is a true record  
25 of the testimony given by the witness. (Fed. R. Civ. P.

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1 30(f)(1)).  
2 Before completion of the deposition, review of  
3 the transcript [xx] was [ ] was not requested. If  
4 requested, any changes made by the deponent (and  
5 provided to the reporter) during the period allowed, are  
6 appended hereto. (Fed. R. Civ. P. 38(e)).  
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9 Dated: December 16, 2020  
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CONNIE MARTIN DUNNE, RPR  
CSR No. 6245



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